

content, calculated as a percentage of weight, than any other on the market, although it is still well under 100%. The claim likely conveys that the product contains a significant percentage of recycled content and has significantly more recycled content than its competitors. If the advertiser cannot substantiate these messages, the claim would be deceptive.

Example 3: An advertiser claims that its packaging creates “less waste than the leading national brand.” The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

Example 4: A product is advertised as “environmentally preferable.” This claim likely conveys that the product is environmentally superior to other products. Because it is highly unlikely that the marketer can substantiate the messages conveyed by this statement, this claim is deceptive. The claim would not be deceptive if the marketer accompanied it with clear and prominent language limiting the environmental superiority representation to the particular attributes for which the marketer has substantiation, provided the advertisement’s context does not imply other deceptive claims. For example, the claim “Environmentally preferable: contains 50% recycled content compared to 20% for the leading brand” would not be deceptive.

§ 260.4 General environmental benefit claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service offers a general environmental benefit.

(b) Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

(c) Marketers can qualify general environmental benefit claims to prevent deception about the nature of the environmental benefit being asserted. To avoid deception, marketers should use clear and prominent qualifying lan-

guage that limits the claim to a specific benefit or benefits. Marketers should not imply that any specific benefit is significant if it is, in fact, negligible. If a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit(s), marketers should analyze trade-offs resulting from the benefit(s) to determine if they can substantiate this claim.

(d) Even if a marketer explains, and has substantiation for, the product’s specific environmental attributes, this explanation will not adequately qualify a general environmental benefit claim if the advertisement otherwise implies deceptive claims. Therefore, marketers should ensure that the advertisement’s context does not imply deceptive environmental claims.

Example 1: The brand name “Eco-friendly” likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as “Eco-friendly: made with recycled materials,” would not be deceptive if: (1) The statement “made with recycled materials” is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement’s context does not imply other deceptive claims.

Example 2: A marketer states that its packaging is now “Greener than our previous packaging.” The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret “Greener” in this context to mean that other significant environmental aspects of the packaging also are improved over previous packaging. A claim stating “Greener than our previous packaging” accompanied by clear and prominent language such as, “We’ve reduced the weight of our packaging by 15%,” would not be deceptive, provided that reducing the packaging’s weight makes the product more environmentally beneficial overall and the advertisement’s context does not imply other deceptive claims.

Example 3: A marketer’s advertisement features a picture of a laser printer in a bird’s nest balancing on a tree branch, surrounded

by a dense forest. In green type, the marketer states, “Buy our printer. Make a change.” Although the advertisement does not expressly claim that the product has environmental benefits, the featured images, in combination with the text, likely convey that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, this advertisement is deceptive.

Example 4: A manufacturer’s Web site states, “Eco-smart gas-powered lawn mower with improved fuel efficiency!” The manufacturer increased the fuel efficiency by 1/10 of a percent. Although the manufacturer’s claim that it has improved its fuel efficiency technically is true, it likely conveys the false impression that the manufacturer has significantly increased the mower’s fuel efficiency.

Example 5: A marketer reduces the weight of its plastic beverage bottles. The bottles’ labels state: “Environmentally-friendly improvement. 25% less plastic than our previous packaging.” The plastic bottles are 25 percent lighter but otherwise are no different. The advertisement conveys that the bottles are more environmentally beneficial overall because of the source reduction. To substantiate this claim, the marketer likely can analyze the impacts of the source reduction without evaluating environmental impacts throughout the packaging’s life cycle. If, however, manufacturing the new bottles significantly alters environmental attributes earlier or later in the bottles’ life cycle, *i.e.*, manufacturing the bottles requires more energy or a different kind of plastic, then a more comprehensive analysis may be appropriate.

§ 260.5 Carbon offsets.

(a) Given the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.

(b) It is deceptive to misrepresent, directly or by implication, that a carbon offset represents emission reductions that have already occurred or will occur in the immediate future. To avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emission reductions that will not occur for two years or longer.

(c) It is deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the

reduction, or the activity that caused the reduction, was required by law.

Example 1: On its Web site, an online travel agency invites consumers to purchase offsets to “neutralize the carbon emissions from your flight.” The proceeds from the offset sales fund future projects that will not reduce greenhouse gas emissions for two years. The claim likely conveys that the emission reductions either already have occurred or will occur in the near future. Therefore, the advertisement is deceptive. It would not be deceptive if the agency’s Web site stated “Offset the carbon emissions from your flight by funding new projects that will begin reducing emissions in two years.”

Example 2: An offset provider claims that its product “will offset your own ‘dirty’ driving habits.” The offset is based on methane capture at a landfill facility. State law requires this facility to capture all methane emitted from the landfill. The claim is deceptive because the emission reduction would have occurred regardless of whether consumers purchased the offsets.

§ 260.6 Certifications and seals of approval.

(a) It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.

(b) A marketer’s use of the name, logo, or seal of approval of a third-party certifier or organization may be an endorsement, which should meet the criteria for endorsements provided in the FTC’s Endorsement Guides, 16 CFR part 255, including Definitions (§255.0), General Considerations (§255.1), Expert Endorsements (§255.3), Endorsements by Organizations (§255.4), and Disclosure of Material Connections (§255.5).⁴⁴

(c) Third-party certification does not eliminate a marketer’s obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.

(d) A marketer’s use of an environmental certification or seal of approval likely conveys that the product offers a general environmental benefit (*see* §260.4) if the certification or seal does not convey the basis for the certification or seal, either through the name

⁴⁴ The examples in this section assume that the certifiers’ endorsements meet the criteria provided in the Expert Endorsements (§255.3) and Endorsements by Organizations (§255.4) sections of the Endorsement Guides.